IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re Application of:

Blaine R. Southam

Serial No.: 10/617,002

Filed: July 9, 2003

Group Art Unit: 2143

Examiner: Jean Gilles, Jude

Docket No. 200209006-1

For: **Systems And Methods For Collecting Data Regarding Network Service Operation**

APPEAL BRIEF UNDER 37 C.F.R. § 41.37

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P.O. Box 1450
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Sir:

This Appeal Brief under 37 C.F.R. § 41.37 is submitted in support of the Notice of Appeal filed September 15, 2008, responding to the Final Office Action mailed July 14, 2008.

It is not believed that extensions of time or fees are required to consider this Appeal Brief. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 C.F.R. § 1.136(a), and any fees required therefor are hereby authorized to be charged to Deposit Account No. 08-2025.

I. Real Party in Interest

The real party in interest is Hewlett-Packard Development Company, LP, a limited partnership established under the laws of the State of Texas and having a principal place of business at 20555 S.H. 249 Houston, TX 77070, U.S.A. (hereinafter "HPDC"). HPDC is a Texas limited partnership and is a wholly-owned affiliate of Hewlett-Packard Company, a Delaware Corporation, headquartered in Palo Alto, CA. The general or managing partner of HPDC is HPQ Holdings, LLC.

II. Related Appeals and Interferences

There are no known related appeals or interferences that will affect or be affected by a decision in this Appeal.

III. Status of Claims

Claims 4, 9, 13, 15-23 have been canceled leaving claims 1-3, 5-8, 10-12, 14, and 24-31 remaining. Each of those claims stand finally rejected. No claims have been allowed. The final rejections of claims 1-3, 5-8, 10-12, 14, and 24-31 are appealed.

IV. Status of Amendments

No amendments were made subsequent to the final Office Action The claims in the attached Claims Appendix (see below) reflect the present state of the claims.

V. Summary of Claimed Subject Matter

The claimed inventions are summarized below with reference numerals and references to the written description ("specification") and drawings. The subject matter described in the following appears in the original disclosure at least where indicated, and may further appear in other places within the original disclosure.

Independent claim 1 describes a method for collecting data regarding service operation. The method of claim 1 comprises a client sending a message using a web protocol to a web service on the Internet. *Applicant's specification*, page 11, lines 19-22; Figure 3A, items 300 and 302. The method of claim 1 further comprises a network proxy intercepting the message before it reaches the web service. *Applicant's specification*, page 11, lines 22-23; Figure 3A item 304. The method of claim 1 further comprises the network proxy storing profiling information about the message in a database that is separate from the web service, the profiling information including the time the message was received by the network proxy. *Applicant's specification*, page 13, lines 1-3; Figure 3B, item 316. The method of claim 1 further comprises the network proxy transmitting the message to a destination web service. *Applicant's specification*, page 12, lines 17-24; Figure 3A, items 312 and 314.

Independent claim 24 describes a computer (200, Figure 2) that stores a network proxy (106, Figure 2). The computer comprises logic configured to intercept messages sent by a client using a web protocol and directed to a web service that executes on a separate computer on the Internet before the messages reach the web service. *Applicant's specification*, page 4, lines 15 to page 5, line 13; page 11, lines 22-23; Figure 3A item 304. The computer of claim 24 further comprises logic configured to

store in a database that is separate from the web service profiling information about the message, the profiling information including the time the message was received by the network proxy. *Applicant's specification*, page 8, line 21 to page 9, line 2; page 13, lines 1-3; page 15, line 19 to page 16, line 2; Figure 3B, item 316.

VI. Grounds of Rejection to be Reviewed on Appeal

The following grounds of rejection are to be reviewed on appeal:

1. Claims 1-3, 5, 6, 8, 10-12, 14, 24, 25, and 27-31 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over *Yairi, et al.* ("Yairi," U.S. Pub. 2004/0078424) in view of *Boucher, et al.* ("Boucher," U.S. Pat. No. 2003/0212739).

2. Claims 7 and 26 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over *Yairi* and *Boucher* in view of *Carson, et al.* ("Carson," U.S. Pub. No. 2004/0093580).

VII. Arguments

The Appellant respectfully submits that Applicant's claims are not obvious under 35 U.S.C. § 103, and respectfully requests that the Board of Patent Appeals overturn the final rejections of those claims at least for the reasons discussed below.

Claim Rejections - 35 U.S.C. § 103(a)

As has been acknowledged by the Court of Appeals for the Federal Circuit, the U.S. Patent and Trademark Office ("USPTO") has the burden 35 U.S.C. § 103 to establish obviousness by showing objective teachings in the prior art or generally available knowledge of one of ordinary skill in the art that would lead that individual to the claimed invention. *In re Fine*, 837 F.2d 1071, 1074, 5 U.S.P.Q. 2d 1596, 1598 (Fed. Cir. 1988). The key to supporting an allegation of obviousness under 35 U.S.C. § 103 is the clear articulation of the reasons why the Examiner believes that claimed invention would have been obvious. *See* MPEP § 2141. As stated by the Supreme Court, "[r]ejections on obviousness cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." *KSR v. Teleflex*, 550 U.S. at ___, 82 USPQ2d at 1396 (quoting *In re Kahn,* 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006)).

Applicant respectfully submits that the Examiner has not established that Applicant's claims are obvious in view of the prior art. Applicant discusses those claims in the following.

A. Rejection of Claims 1-3, 5, 6, 8, 10-12, 14, 24, 25, and 27-31

Claims 1-3, 5, 6, 8, 10-12, 14, 24, 25, and 27-31 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over *Yairi, et al.* ("Yairi," U.S. Pub. 2004/0078424) in view of *Boucher, et al.* ("Boucher," U.S. Pat. No. 2003/0212739). Applicant respectfully traverses.

1. The Yairi Reference

Yairi discloses a method and system for accessing web services from a mobile terminal, such as a mobile phone. *Yairi*, Abstract. More particularly, Yairi describes a communications network adapted to allow mobile terminals to use a web-based instant messaging (IM) service, such as AOL Instant Messaging, MSN Messenger, and Yahoo! Messenger. *Yairi*, paragraph 0023.

In Yairi's system, mobile terminals 113, 115, and 117 wirelessly communicate over a voice network 131 via base stations 129, as is conventional in the art. *Yairi*, paragraph 0023. Using the mobile terminals, IM clients can send IM messages over the voice network 131. *Yairi*, paragraph 0023. When an IM message is directed to an IM service, the message is routed through an IM server 111 to an IM web services gateway 101. *Yairi*, paragraph 0024. The gateway 101 includes a web services proxy module 103 and a web services broker module 105. *Yairi*, paragraph 0024.

The proxy module 103 is responsible for translating messages between the format used by the mobile terminals into a web services format. *Yairi*, paragraph 0026. The web services broker module 105 provides registration and discovery for web services that can be accessed through the gateway 101. *Yairi*, paragraph 0027. The

broker module 105 stores in a database 133 any data needed for the interaction between the IM client and the requested web service. *Yairi*, paragraph 0027.

In view of the above, it is clear that Yairi's mobile terminals do not send messages using a "web protocol". Moreover, it is noted that Yairi does not describe any component, including the proxy module 103 and the broker module 105, that stores in a database profiling information about a received message.

2. The Boucher Reference

Boucher discloses a store and forward architecture that supports multiple applications within an extensible network to direct information of various formats to any of multiple destinations. *Boucher*, Abstract. Boucher describes a proxy 12 that, among other things, writes requests to a database if the request cannot be completed within a certain period of time. *Boucher*, paragraph 0155.

3. Applicant's Claims

Applicant's independent claim 1 provides as follows (emphasis added):

> 1. A method for collecting data regarding service operation, the method comprising:
>
> a client sending a message *using a web protocol* to a web service on the Internet;
>
> a network proxy intercepting the message before it reaches the web service;
>
> the network proxy *storing profiling information about the message in a database that is separate from the web service*, the profiling

information including the time the message was received by the network proxy; and

the network proxy transmitting the message to a destination web service.

(a) Client Sending a Message Using a Web Protocol

In the final Office Action, the Examiner alleged that Yairi teaches a client "sending a message using a web protocol to a web service on the Internet". To support that allegation, the Examiner noted that Yairi describes an "IM client 113 sending a message to a web server 125 via a proxy 103."

Although Yairi does indeed disclose mobile terminal sending a message over a "voice network 131," it is clear that the terminal does not send a message "using a web protocol", as is explicitly required in Applicant's claim 1. In addition to the fact that the message is sent over a voice network, that the message is not sent using a web protocol is clear from the fact that the message is sent to the web service proxy 103, whose responsibility is to *translate the message into a web format. See Yairi*, paragraph 0026.

In the Response to Amendment/Arguments section of the final Office Action, the Examiner argues that sending a message from a mobile telephone on a voice network is sending a message using a web protocol. Although the Examiner is correct that IM messages are being sent over a network using web protocols, Yairi explicitly indicates that Yairi's mobile terminals (which the Examiner treats as the claimed "client") are *not* sending messages using a web protocol. We know this is true at least because the messages sent by the mobile terminals *must be translated into a web format by the web service proxy 103* before they can be provided and function to a web service. Again,

that is the purpose and function of Yairi's web service proxy 103. *Yairi*, paragraph 0026. Therefore, although the Examiner may speculate and hypothesize as to the use of a "data link layer protocol" and "global addressing", in Yairi's system the Examiner's position *directly contradicts* Yairi's explicit disclosure.

(b) Storing Profiling Information about a Received Message

The Examiner further alleged in the final Office Action that Yairi teaches "the network proxy storing profiling information about the message in a database that is separate from the web service". For support, the Examiner identified the web service proxy 103. In response, Applicant notes that the web service proxy 103 is not described anywhere in the Yairi reference as storing "profiling information" about a message sent by a client. Instead, as described above, Yairi's web service proxy 103 merely *translates* messages from mobile phones for web services 121, 123, and 125. Applicant further notes that although Yairi identifies a database 133 in which information is stored, that database is not ever described by Yairi as storing any profiling information. Instead, Yairi indicates that the database 133 stores:

> any data needed for the interaction between the end user and a requested web service. The stored data may include web service description metadata, web service composition metadata, or web service workflow logic. The stored data may additionally include program control logic, payment information, or any other information about the web service or web service provider that may be presented to the user, e.g., during web service discovery or activation. This stored data may subsequently be referred to either collectively or specifically as web service metadata or simply as metadata.

Yairi, paragraph 0027. Clearly, the "data needed for the interaction between the end user and a requested web service" is not the equivalent of the "profiling information" explicitly recited in Applicant's claim 1.

In the Response to Amendment/Arguments section of the final Office Action, the Examiner argued that Applicant has failed to clearly point out the patentable novelty and delineate the contours of the invention. In reply, Applicant notes that the Examiner has simply cited legal boilerplate and has failed to identify *how* Applicant has failed to point out the patentable novelty or delineate the contours of the invention. As is clear from the foregoing, Applicant has clearly explained how the cited references fail to address Applicant's claim limitations and, therefore, has clearly established that the rejections are flawed and should be withdrawn. Nothing more is required of Applicant.

(c) Storing the Time the Message was Received

Later in the final Office Action, the Examiner admitted that Yairi does not disclose or suggest a network proxy storing profiling information "including the time the message was received by the network proxy". The Examiner attempted to account for that limitation by citing the Boucher reference, which was alleged to disclose storing profiling information including the time a message was received by a proxy. In response, Applicant asserts that the Boucher reference discloses nothing of the sort. Although Boucher identifies a store and forward proxy 12, nowhere does Boucher indicate that proxy stores "profiling information" about a received message or that the stored profiling information includes "the time the message was received". Instead, Boucher only

indicates that the proxy writes a request to a database "if the request cannot be completed immediately." *See Boucher*, paragraphs 0144, 0147, 0151, 0154, and 0157.

(d) Conclusion

In view of the foregoing, it is clear that the applied references do not disclose or suggest all of the limitations of claim 1. Applicant therefore submits that claim 1 and its dependents are allowable over those references. Applicant further submits that claim 24 and its dependents are allowable for similar reasons.

B. Rejection of Claims 7 and 26

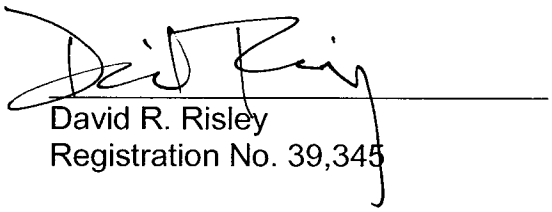
Claims 7 and 26 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over *Yairi* and *Boucher* in view of *Carson, et al.* ("Carson," U.S. Pub. No. 2004/0093580). Applicant respectfully traverses the rejection.

As identified above, Yairi and Boucher do not teach aspects of Applicant's claims. In that Carson does not remedy the deficiencies of the Yairi and Boucher references, Applicant respectfully submits that claims 7 and 26 are allowable over the Yairi/Boucher/Carson combination for at least the same reasons that claims 1 and 24 are allowable over Yairi and Boucher.

VIII. Conclusion

In summary, it is Applicant's position that Applicant's claims are patentable over the applied prior art references and that the rejection of these claims should be withdrawn. Appellant therefore respectfully requests that the Board of Appeals overturn the Examiner's rejection and allow Applicant's pending claims.

Respectfully submitted,

By: 
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Claims Appendix under 37 C.F.R. § 41.37(c)(1)(viii)

The following are the claims that are involved in this Appeal.

1. A method for collecting data regarding service operation, the method comprising:

a client sending a message using a web protocol to a web service on the Internet;

a network proxy intercepting the message before it reaches the web service;

the network proxy storing profiling information about the message in a database that is separate from the web service, the profiling information including the time the message was received by the network proxy; and

the network proxy transmitting the message to a destination web service.

2. The method of claim 1, wherein intercepting the message comprises intercepting the message sent by a developed web service that executes on a client computer.

3. The method of claim 1, wherein intercepting the message comprises intercepting the message using a network proxy that executes on a computer that is intermediate a computer on which the client executes and a computer on which the web service executes.

4. (Canceled)

5. The method of claim 1, wherein storing information about the message further comprises storing information about at least one of an identity of the client that sent the message, an identity of the web service, a time at which the message was transmitted to the destination network service, and information about the substance of the message.

6. The method of claim 1, wherein transmitting the message to a destination web service comprises transmitting the message to the web service on the Internet.

7. The method of claim 1, wherein transmitting the message to a destination web service comprises transmitting the message to a mock web service that emulates operation of the web service on the Internet.

8. The method of claim 1, further comprising the network proxy interjecting instrumentation information into the message prior to transmitting the message to the destination web service, the instrumentation information being useful in profiling system operation.

9. (Canceled)

10. The method of claim 8, wherein interjecting instrumentation information comprises adding instrumentation information to a header of the message.

11. The method of claim 8, wherein interjecting instrumentation information comprises interjecting at least one of a time the message was received, an identity of the client computer that sent the message, an identity of the destination network service, a time at which the message was transmitted to the destination network service, and information about the substance of the message.

12. The method of claim 11, further comprising the network proxy receiving a response from the destination web service and storing profiling data regarding the response in the database.

13. (Canceled)

14. The method of claim 12, wherein storing data regarding the response comprises storing at least one of a time the response was received, an identity of the destination network service, a time that the message transmitted to the destination network service was received, and a time that the response was transmitted by the destination network service.

15-23. (Canceled)

24. A computer that stores a network proxy, the proxy comprising:

logic configured to intercept messages sent by a client using a web protocol and directed to a web service that executes on a separate computer on the Internet before the messages reach the web service;

logic configured to store in a database that is separate from the web service profiling information about the message, the profiling information including the time the message was received by the network proxy; and

logic configured to transmit the message to a destination network service.

25. The computer of claim 24, wherein the logic configured to store information about the message comprises logic configured to store information about at least one of an identity of the client computer that sent the message, an identity of the web service, a time at which the message was transmitted to the destination network service, and information about the substance of the message.

26. The computer of claim 24, wherein the logic configured to transmit is configured to transmit the message to one of the web service and a mock web service that emulates operation of the web service.

27. The computer of claim 24, further comprising logic configured to interject instrumentation information into the message.

28. The computer of claim 27, wherein the logic configured to interject instrumentation information comprises logic configured to add instrumentation information to a header of the message.

29. The computer of claim 27, wherein the logic configured to interject instrumentation information comprises logic configured to interject at least one of a time the message was received, an identity of the client computer that sent the message, an identity of the web service, a time at which the message was transmitted to the destination network service, and information about the substance of the message.

30. The computer of claim 24, further comprising logic configured to receive a response from the destination web service and logic configured to store in the database profiling data regarding the response.

31. The computer of claim 30, wherein the logic configured to store data regarding the response comprises logic configured to store at least one of a time the response was received, an identity of the destination network service, a time that the message transmitted to the destination network service was received, and a time that the response was transmitted by the destination network service.

Evidence Appendix under 37 C.F.R. § 41.37(c)(1)(ix)

There is no extrinsic evidence to be considered in this Appeal. Therefore, no evidence is presented in this Appendix.

Related Proceedings Appendix under 37 C.F.R. § 41.37(c)(1)(x)

There are no related proceedings to be considered in this Appeal. Therefore, no such proceedings are identified in this Appendix.